

# THE GRAZ STERILIZATION TRIAL

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**D**URING the latter months of 1932 the police of Graz in Steiermark, Austria, discovered that a relatively large number of men of this town and of Vienna had been sterilized by physicians and medical students who had either carried out on them a double vasectomy or had ligated both their *vasa deferentia*. In view of the fact that similar operations have been proposed as a means of securing sterilization in men, and are indeed adapted for this purpose in certain of the United States and elsewhere, the case has some interest for the readers of this REVIEW.

In actual fact eugenic aims had no part in the Graz sterilizations. The operating physicians took not the least interest in the genetical constitution of their patients—they were interested in hardly anything but the operation fee; nor were the patients themselves interested in eugenics. Some of these were married men with small incomes who already had one or two children and were desperate at the prospect of having to bring up more; some had no children, and wanted none; and some were unmarried. The idea that they might be carriers of transmissible defects did not even occur to them. It may be recalled that Lenz, discussing a similar case, expressed the view that men who asked to be sterilized were hardly worthy to continue their race, and that it was quite proper to sterilize them.

The sentiment of an important part of the Austrian population and Government, however, determined by their adherence to the doctrines of the Roman Catholic Church, is strongly against eugenic or (except for very strictly therapeutic purposes) any other sterilization; and it was for this reason that action was taken against one physician and two medical students who had carried out on a number of men (at least 100) operations that had the effect of making them sterile. Besides these, certain other individuals were

prosecuted for having helped in or had some other connection with the operations—especially an author who by lectures and printed material had advocated this method of sterilization and even helped his listeners and readers to get into touch with the operating surgeons and “half-surgeons.”

According to the Austrian Criminal Law (dating from 1852, but really only a revised edition of a former criminal law of 1803), an individual is guilty of causing severe bodily damage (*schwere körperliche Beschädigung*) who, not with the intention of killing but with other *hostile* (*feindselig*) intention, has acted against a person in such a way as to produce a disturbance of health or incapacity for work lasting at least twenty days, or a mental disorder, or severe injury to that person (§ 152). The punishment is imprisonment for a period of six months to one year, or under aggravating circumstances up to five years (§ 154). If the crime has brought about loss of procreative faculty in the injured individual the punishment is hard labour for five to ten years (§ 156).

The law does not state what a severe injury is, but in the case under survey the court took it for granted that the sterilizing operations, while being severe injuries in the legal sense, had not the special character specified in section 156, in which the reference was to *permanent* loss of procreative capacity. This was not mentioned specifically, for when the law was created sterilization by vasectomy or vaso-ligation, was not yet known and the only operation thought of in this connection was castration, in other words complete destruction or removal of the genital glands and thereby of procreative capacity. After the modern operation sterility is not permanent; a reverse operation is possible and as a matter of fact was successfully carried out in one of the Graz cases.

Moreover, the judges concluded that

*hostile intention*, which would have to be proved to make the operations punishable under the above-mentioned law, was lacking. The prosecutor had expressed the view that a hostile intention was present in the mere intention to attack the bodily integrity of an individual; but the court found that the law undoubtedly meant the intention of *damaging the body*, this interpretation being borne out by the wording of the analogous section (§ 136) of the older criminal law of 1803 which runs: Who with the intention of damaging an individual injures him severely commits a crime. A *hostile intention* is thus an intention to injure physically; a *dolus directus* is necessary, at least an intended assault. But in the present case the defendants had carried out surgical operations with the intention of producing an effect desired by the subjects themselves, who presumably were entitled to dispose of their bodies and had indeed themselves solicited the operation; and it was therefore impossible to argue that the surgeons had acted with intent to assault, let alone with a still severer hostile intention. The question as to what were the defendants' real motives (i.e. whether their purpose was to help their patients, or the human race, or just their bank balances) is entirely irrelevant. Even the fact that two of them had not graduated and were therefore not entitled to operate makes no difference, for only the treatment of *sick* persons is forbidden by the criminal

law (§ 343) to unqualified persons, whereas those operated on in the present case were not sick.

The court was thus obliged to acquit the defendants, basing its verdict on the fact that *the Austrian Criminal Law contains no section forbidding the operation of sterilization*. In other countries such legal prescriptions do exist, for instance in Germany, where the Criminal Law was augmented by a section—266a of May 26th, 1933—stating that an individual who injures anyone with his own consent acts against the law only if the action, in spite of the consent of the injured individual, violates custom. In the new German Sterilization Law which came into force on January 1st, 1934, section 14 reads thus: Sterilization, not carried out according to the terms of this law, as well as removal of the genital glands, are only permissible if performed by a physician according to the rules of medical science, to avoid serious danger to the life or the health of the person on whom the operation is undertaken, and with his consent.

The judgment of the Graz court is not final. An appeal against it has been lodged in the Supreme Court, but it is very unlikely that it will be changed in any fundamental sense. There exist in Austria people who want a Sterilization Bill more for the purpose of forbidding sterilization for other than eugenic reasons than for facilitating sterilization having this purpose.

